Filed 10/19/16 Hatfield v. Gray CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

RUSSELL HATFIELD et al., as Trustees, etc., Plaintiffs and Respondents, v. TESLA GRAY et al., Defendants and Appellants.	D067963 (Super. Ct. No. 37-2013-00040751-CU-OR-NC)

APPEALS from a judgment of the Superior Court of San Diego County, Robert P. Dahlquist, Judge. Dismissed in part; affirmed in part.

Tesla Gray, in pro. per., and Raymond Gray, in pro. per., for Defendants and Appellants.

Songstad Randall Coffee & Humphrey, Christopher E. Deal and Chris D. Greinke for Plaintiffs and Respondents.

I.

INTRODUCTION AND BACKGROUND

Russell Hatfield and Joan I. Hatfield, Trustees of the Hatfield Family Trust Dated May 9, 2000 (collectively "the Hatfields") brought this action against Tesla Gray (Tesla) and Equity Holding Corp., as Trustee for the 1620 Wilt Road Trust (Wilt Road Trust). In their complaint, the Hatfields alleged that, in 2007, Tesla obtained a loan on certain real property located at 1620 Wilt Road (the Property) secured by a deed of trust and that the deed of trust inadvertently failed to include the legal description of one of the two parcels that comprise the Property. The Hatfields further alleged that, in 2008, Tesla transferred the Property to the Wilt Road Trust, and thereafter, the lender's successor foreclosed on the Property and eventually sold the Property to the Hatfields. The Hatfields alleged that the 2011 trustee's deed upon sale related to the foreclosure as well as the grant deed from the lender's successor to the Hatfields also inadvertently failed to include the legal description of one of the two parcels comprising the Property. The Hatfields brought causes of action to quiet title to the Property and to reform the legal instruments in the Property's chain of title to reflect its proper legal description, and also sought ancillary declaratory and injunctive relief.

During a bench trial, Tesla's father, Raymond Gray (Raymond), testified that he is the successor trustee to the Wilt Road Trust. After the trial, the trial court entered a statement of decision in favor of the Hatfields. The court found that the "parties to the [2007] deed of trust intended for the entire property then-owned by Te[sl]a . . . to be used

as security for the . . . loan." The court found that it would be "inconceivable" that the lender intended to "take as security for its $1.4 million loan a partial, illegal lot, instead of the full legal lot owned by Tesla . . . at the time of the loan." The court also found that Raymond's testimony to the contrary was "not credible," and that Raymond and Tesla's arguments that the loan was secured by only a portion of the Property were inconsistent with their conduct, "virtually all of the documentary evidence," and "common sense." The court found in favor of the Hatfields on all of their causes of action, and subsequently entered a judgment against both Tesla and Raymond as Trustee for the Wilt Road Trust. In its judgment, the trial court determined that the Hatfields were the rightful owners of the Property, and reformed the legal instruments in the chain of title for the Property to reflect the Hatfields' ownership.

Tesla and Raymond each filed appeals from the judgment. Tesla and Raymond, both acting in propia persona, filed a joint brief. The Hatfields filed a motion to dismiss the appeals. The Hatfields argue that Raymond's appeal must be dismissed because it is well established that a nonattorney trustee may not appear in the courts of this state on behalf of a trust. The Hatfields maintain that Tesla's appeal should be dismissed because Tesla, as a beneficiary to the Wilt Road Trust, does not have standing to raise claims on appeal pertaining to the Wilt Road Trust's purported ownership of the Property.

We dismiss Raymond's appeal on the ground that he may not represent the Wilt Road Trust as trustee in propia persona. We also dismiss that portion of Tesla's appeal insofar as she seeks reversal of the trial court's judgment with respect to the Hatfields' quiet title cause of action and reformation of the 2011 trustee's deed upon sale because

Tesla has no standing to raise such claims in light of her 2008 transfer of the Property to the Wilt Road Trust. Tesla also appears to seek reversal of the court's judgment insofar as the court reformed the 2007 deed of trust that she individually executed. We affirm the judgment with respect to this aspect of Tesla's appeal.

II.

DISCUSSION

A. *Raymond's appeal is dismissed because he lacks authority as Trustee of the Wilt Road Trust to represent the trust in this court in propia persona*

The Hatfields contend that Raymond's appeal must be dismissed because he lacks authority as Trustee of the Wilt Road Trust to represent the trust in this court in propia persona.

A "nonattorney trustee who represents the trust in court is representing and affecting the interests of the beneficiary and is thus engaged in the unauthorized practice of law." (*Aulisio v. Bancroft* (2014) 230 Cal.App.4th 1516, 1524, quoting *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 549 (*Ziegler*).) Accordingly, a trustee may not engage in such action. (See *Ziegler*, *supra*, at p. 549 [affirming trial court's order directing trustee who was not licensed to practice law to withdraw from representing the trust].

In his opposition to the Hatfield's motion to dismiss,[1] Raymond does not dispute that he is not licensed to practice law in this state and that he is seeking to represent the

[1] Raymond's opposition to the motion to dismiss was contained in a document that Raymond and Tesla jointly filed, in propia persona, entitled "Motion for Judicial Notice, *Opposition to Motion to Dismiss* and for Summary Reversal." (Italics added, some

Trust on appeal in propia persona.[2] Nor does Raymond dispute that such representation is improper under California law. Rather, Raymond contends that dismissal of his appeal is not warranted because his failure to obtain counsel for the Wilt Road Trust "could . . . be remedied by him obtaining counsel to sign the brief."[3] We are not persuaded.

To begin with, despite Raymond's statement that he "could" obtain counsel to sign the brief that he and Tesla have filed, he has not done so, even though several months have passed since Raymond proposed such a remedy.[4] (See *Ziegler, supra*, 64 Cal.App.4th at p. 547, 549 [affirming order requiring nonattorney trustee to obtain counsel for trust within 30 days or face dismissal of the complaint].)

Further, having counsel sign appellants' brief would be futile, because the brief fails to adequately raise its sole appellate contention. Appellants' only claim on appeal is "[t]he [2007] deed of trust covered but a single parcel and it matters not what plaintiffs 'thought' they were getting as the chain of title is clear and there is no evidence from the bank contradicting the public record." (Some capitalization & boldface omitted.) In

---

capitalization omitted.) We address the motion for judicial notice and the motion for summary reversal aspects of the document in part II.B, *post*.

2 The appellants were represented by counsel in the trial court.

3 Raymond also contends that the requirement that he retain counsel is "irrelevant" because Tesla has standing to raise a claim that the underlying action violates an automatic bankruptcy stay entered in an involuntary bankruptcy proceeding filed against Tesla. We conclude in part II.B, *post*, that Tesla has not properly raised on appeal any claim pertaining to a purported violation of a bankruptcy stay.

4 The motion to dismiss was filed on April 27, 2016. Appellants' untimely opposition was filed on June 15 as a portion of the document described in footnote 1. (See Cal. Rules of Court, rule 8.54(a) [stating that any opposition to a motion must be served and filed within 15 days after the motion is filed]; see also *id.*, rule 8.54(c) ["A failure to oppose a motion may be deemed a consent to the granting of the motion"].)

support of this claim with respect to the Hatfields' quiet title cause of action, appellants argue that "[t]here is no proof that [the Hatfields'] grantor was in title and then conveyed that title to them." Similarly, with respect to the Hatfields' reformation cause of action, appellants claim "there is no such evidence," that the Hatfields' grantor intended to encumber the entire property and reform the 2011 trustee's deed of sale. In sum, appellants contend that the record lacks substantial evidence to support the trial court's findings.

Although they raise a substantial evidence challenge, appellants fail to cite all of the evidence favorable to the judgment, as is required. (See *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 [substantial evidence review is forfeited if appellant fails to cite evidence favorable to the judgment].) Even more fundamentally, appellants' brief does not contain *any* citations to the reporter's transcript of the trial. (See Cal. Rules of Court, rule 8.204(a)(1)(C) [requiring that briefs "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears"].) Further, the *only* record citations that do appear in appellants' brief are to trial exhibits, which are not before this court in light of appellants' failure to designate such exhibits for transmittal to this court. (See *id.*, rule 8.224(a) ["[w]ithin 10 days after the last respondent's brief is filed or could be filed under rule 8.220, a party wanting the reviewing court to consider any original exhibits that were admitted in evidence, refused, or lodged but that were not copied in the clerk's transcript under rule 8.122 or the appendix under rule 8.124 must serve and file a notice in superior court designating such exhibits"].) Thus, even assuming that Raymond had "obtain[ed] counsel to sign the

brief," it is clear that appellants have presented this court with no basis upon which it could reverse the judgment.

Accordingly, we conclude that Raymond's appeal as Trustee of the Wilt Road Trust must be dismissed.

B. *Tesla's appeal is dismissed insofar as she seeks reversal of the quiet title cause of action or reformation of the 2011 trustee's deed of sale for lack of standing; Tesla fails to raise any cognizable legal argument as to the judgment reforming the 2007 deed of trust*

The Hatfields contend that Tesla's appeal must be dismissed because, as a result of her 2008 conveyance of the Property to the Wilt Road Trust, her " 'rights or interests are [not] injuriously affected by the judgment' " and she therefore lacks standing to appeal. (Quoting *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.)

" 'Standing to appeal is jurisdictional [citation] and the issue of whether a party has standing is a question of law [citation].' [Citation.] To have standing to appeal, a person generally must be a party of record and be sufficiently aggrieved by the judgment or order." (*Bridgeman v. Allen* (2013) 219 Cal.App.4th 288, 292.) " 'One is considered 'aggrieved' whose rights or interests are injuriously affected by the judgment. . . .' " (*Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC* (2014) 230 Cal.App.4th 244, 252.)

In *Chao Fu, Inc. v. Chen* (2012) 206 Cal.App.4th 48 at pages 58-59, the Court of Appeal outlined the nature of a quiet title action and an action to reform legal instruments related to real property and the requirement that a party have a legal interest in the property in order to have standing to maintain such an action:

> " 'A quiet title action seeks to declare the rights of the parties in realty. . . . " 'The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to.' " ' [Citation.] 'A description of the parties' legal interests in real property is all that can be expected of a judgment in an action to quiet title.' [Citation.] Title is quieted 'as to legal interests in property.' [Citation.] It follows that absent an interest in the property, a party has no standing to ask the court to quiet title in the property or to obtain damages for the cloud on title. An action to cancel a trustee's deed or other instrument purportedly transferring title is no different. 'One without any title or interest in the property cannot maintain such an action.' "

Thus, a party is aggrieved by a judgment quieting title to real property or reforming legal instruments related to real property only if the party claims an interest in the property.

Tesla acknowledges in her brief that she transferred her interest in the Property to the Wilt Road Trust in 2008 and that, as a result, after 2008, she did not own the Property. While it is undisputed that Tesla is a *beneficiary* of the Wilt Road Trust, a "beneficiary of a trust generally is not the real party in interest" in an action involving a trust. (*Saks v. Damon Raike & Co.* (1992) 7 Cal.App.4th 419, 427.) Thus, Tesla has no standing as a beneficiary of the Wilt Road Trust to challenge the judgment insofar as it quiets title in the Hatfields' favor against the Wilt Road Trust or reforms the 2011 trustee's deed upon sale.

Although Tesla does have standing to appeal the judgment insofar as it reformed the 2007 deed of trust that Tesla individually executed, Tesla fails to adequately raise any legal argument on appeal in support of reversal of the judgment with respect to this issue. As discussed in part II.A, *ante*, while appellants' sole contention on appeal is that the

record lacks substantial evidence to support the trial court's findings, appellants' brief fails to cite to evidence in the record favorable to the judgment, fails to include any citations to the reporter's transcript, and cites only to trial exhibits that are not before this court. (See pt. II.A, *ante*.) Under these circumstances, Tesla's contention that the trial court erred in reforming the 2007 deed of trust is forfeited. (See, e.g., *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738 ["A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*, and *show how and why it is insufficient*,' " and stating that where a party fails to do so, the reviewing court may deem the contention " 'waived' "].)

Accordingly, we conclude that Tesla's appeal must be dismissed insofar as she seeks reversal of the quiet title cause of action or the court's reformation of the 2011 trustee's deed of sale. We further conclude that Tesla fails to raise any cognizable legal argument in support of reversal of the judgment insofar as the court reformed the 2007 deed of trust.[5]

---

5 As noted previously (see fn. 1, *ante*), while this appeal was pending, appellants filed a motion for judicial notice and motion for summary reversal. In their motion, appellants request that we take judicial notice of certain docket sheets from Tesla's bankruptcy proceeding that purportedly demonstrate that "the state court proceedings were commenced and conducted during the period in which [a] statutory bankruptcy [stay] was in effect and therefore [the action is] void." Appellants also request that we enter a summary reversal based on such documents. Appellants argue that "only [Tesla] or the bankruptcy trustee have [*sic*] standing to raise a claim of a violation of the automatic stay."

The bankruptcy documents have no relevance to the claims raised by Tesla on appeal. (See *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 [matters subject to judicial notice must be relevant to issues raised on appeal].) Further, Tesla may not raise new issues on appeal beyond those raised in her opening brief. (See,

III.

DISPOSITION

Raymond's appeal is dismissed. Tesla's appeal is dismissed insofar as she seeks reversal of the trial court's judgment on the Hatfields' quiet title cause of action and reformation of the 2011 trustee's deed upon sale. The judgment is affirmed with respect to the trial court's reformation of the 2007 deed of trust. Raymond and Tesla are to bear costs on appeal.

AARON, J.

WE CONCUR:

McCONNELL, P. J.

PRAGER, J.*

---

e.g., *Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1056 [stating that claim was forfeited because "defendants did not raise this argument in their opening brief on appeal"].) Finally, Tesla did not designate for transmittal a trial exhibit that appears to be a bankruptcy court order granting a motion for relief from the automatic stay. In sum, Tesla failed to properly raise any claims pertaining to the bankruptcy proceeding in this court and the record does not demonstrate that she is entitled to reversal of the judgment on this ground. Accordingly, we deny appellants' motion for judicial notice and deny their motion for summary reversal.

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.